

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of Request by the TETRA Association For Waiver of Sections 90.209, 90.210 and 2.1043 of the Commission's Rules Public Notice DA-09-2633A1 Released December 24, 2009	ET Docket No. 09-234
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**Initial Comments
Initial Opposition
to the TETRA Association Waiver Request
Including
Request For Designation of Undersigned Entities as Parties
And
Request for Placement on Public Notice and for Investigation**

Initial Comments and Previous Submission

The following text was filed by the undersigned parties with the FCC Secretary on or about December 14, 2009: it had essentially the same caption as the above except with no reference to the Public Notice and the ET Docket noted above ("Previous Submission"). On December 24, 2009 the FCC released DA-09-2633A1 establishing ET Docket No. 09-234 and a pleading cycle for Comments and Reply Comments regarding the above-captioned Request or petition (The "TA Petition"). This Previous Submission is hereby submitted again on ECFS by the same undersigned parties: this time as Initial Comments in that docket 09-234.^[*]

The undersigned parties intend to submit additional Comments within the pleading cycle.

^[*] By this second submission, the undersigned parties do not waive any rights they may have under FCC rules and procedures and other applicable law with regard to the Previous Submission.

However, they believe that it is useful to submit this Previous Submission again, on ECFS, at this time at the start of the pleading cycle for the following reasons: DA 09-2633A1 *did not indicate* that the Previous Submission was filed and accepted as filed by the Secretary and presented relevant information on the TA Petition and was available on the ET docket created, ET Docket No. 09-234, which thus this relevant information from being considered by interested parties in this docket. Due especially to the nature of this relevant information, the undersigned parties believe that was not in the public interest of developing a full, fair and timely record and decision. Thus, the undersigned parties submit this pleading at this time so that that interested entities (and not only those shown on the Certificate of Service below, which applies, as it states, to the Previous Submission) can consider the information in this text and respond thereto, if they choose, in Comments rather than replies to Comments. That will develop a more full record on the subject matter, and is appropriate given the factual situation described below in which the subject TETRA Association request or petition was submitted and is being pursued. Also, that situation and the TA Petition do not merely involve technical issues that the Office of Engineering may consider and decide upon.

Previous Submission

The Previous Submission, defined above, is the following text: the rest of this pleading.

The undersigned parties share interest in TETRA equipment for their FCC licenses nationwide and aspects of their coordinated business plans and philanthropy in PMR (Private Mobile Radio) for smart transportation, energy and environment (the “Skybridge Parties”).^{1 2}

¹ These Skybridge Parties are known to the FCC staff that deal with PMR licensing and issues, as shown in their licenses on ULS and their pleadings in various rulemaking, licensing, and other proceedings. Their involvement in TETRA for their FCC licenses and in support of TETRA for the US PMR market is also well known and has also been presented to the FCC including in person in the M-LMS docket 06-49, and in proceedings involving AMTS Auctions. This involvement is presented to the general PMR and wider markets, for example, at www.tetra-us.us. This involvement also involved the complaint to ESTI that lead to its years-long

They hereby submit an initial opposition to the “Request” or petition captioned above of the TETRA Association (“TA”) (the “TA Petition”). *This pleading, with the TA Petition attached, is available by entering in Google “opposition tetra petition.”*

investigation of Motorola’s refusal to license its US patents for TETRA in violation of ETSI IPR Policy, as reported in part in the website listed above, on the page “ETSI Allenged...” Reasons that the TA ignores these involvements is indicated herein. The ETSI IPR Policy is discussed by ETSI here: http://www.etsi.eu/WebSite/document/Legal/ETSI_Guide_on_IPRs.pdf.

² These coordinated plans are partially described in their FCC pleadings including in the proceedings noted in footnote 1, and online publications such as those listed in Exhibit 1 hereto.

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(i) Summary

The Tetra Association (again, the TA) lacks standing to submit the TA Petition. The Request is unripe and its grant would be futile. The TA lacks candor in and submits a false premises as foundation for the Request, and misleading, incomplete and conclusory statements in support. The Petition is thus defective procedurally and subject to dismissal. However, the Skybridge Parties suggest that the FCC place the TA Petition on Public Notice and also conduct an inquiry into matters raised in or by the Petition. They also request that the FCC designate them as parties to any proceeding based on the TA Petition.

This filing is submitted under a Declaration under penalty of perjury, to support the facts alleged. The website www.tetra-us.us, a website of the Skybridge Parties, has not been updated for most of this year and thus does not reflect some facts and issues presented herein.

1. Initial Opposition Explanation

The Skybridge Parties asked the TA on December 14, 2009 by email³ to provide to the FCC (in the matter of this TA Petition) and copy the Skybridge Parties certain facts essential to threshold and other matters of the TA Petition (the “Matters”) that the TA and some persons related to the TA informed the Skybridge Parties were held by the TA but not yet provided to the FCC in this captioned matter, or to publicly the US PMR markets generally, or to the Skybridge Parties.

These facts, the Skybridge Parties have been informed by the TA and TA related parties, relate to said threshold Matters including any reliable or even speculative evidence contrary to the publicly disclosed fact that Motorola holds *US* patents essential for TETRA (“Motorola TETRA Patents”) and takes the position that no one can obtain any license therefore on any basis

³ Copies of this request to the TA, as identified to the TA, were sent to with copies to some of its members that have publicly expressed interest in providing TETRA to the US, and parties dealing with TETRA for US purposes within the European Technical Standards Institute, also known as ETSI.

(whether it is on voluntary basis such as under the ETSI standard of “fair reasonably and nondiscriminatory” or “FRAND” basis, or other basis such asserted in the Skybridge Parties website listed in footnote 1 hereto, regarding US eminent domain and antitrust law). The soonest that the Motorola US Patents all expire is in year 2014, according to the review done by the Skybridge Parties accessing official ETSI records of the Motorola US Patents.⁴ Motorola has stated to the Skybridge Parties and to others in the US PMR market (that reported that to the undersigned) that any purchase or use of TETRA equipment in the US will be subject to legal action for infringement of the Motorola TETRA Patents. The TA has never, to the Skybridge Parties or to their knowledge to any other party publicly or otherwise, shown an evidence contrary to what is stated in this paragraph. Instead, the TA has regularly told the US PMR markets, in presentations made in the US, that TETRA is now and for some future time is blocked in the US for reasons explained in this paragraph.⁵

⁴ Those records are included in the documents that may be downloaded from the “ETSI Alleged...” page at www.tetra-us.us. The undersigned notes here that the last letter Motorola wrote to ETSI included on that page as a download asked ETSI to make public (to place on the ETSI public IPR database) the Motorola letters to ETSI as to the Motorola position to not license the Motorola TETRA Patents. That is not noted on the above cited page, including in the alerts at the top, and this should be noted here.

⁵ The TA adds, as does Motorola to ETSI, that there is a possibility that if the US markets show enough interest, that one day, under vaguely stated (and clearly not legally binding) conditions. Motorola—which the TA describes as its “good member,” may chose to amend its blocking and litigation threat position noted above and accept licensing on some undefined basis of the Motorola TETRA Patents. Motorola and the TA, and persons in the PRM trade press repeating them, attempt to turn on its head and speciously portray the Motorola position as follows: Motorola *will* license its US patents under those undefined, unscheduled conditions (including adoption of a US version of TETRA by TIA, resolution of alleged interference issues with P25, and other matters). But when the undersigned asked the TA repeatedly, and equipment makers that are active TA members in matters relating to TETRA in the US repeatedly, if any of them even had, saw or heard of any written statement from Motorola reciting those vague conditions, they all said “No.” That is specious characterization since it presents a solution that does not exist and the conditions for which are not defined, even orally, and it ignores the reality which is that Motorola holds valid US patents for TETRA and indeed currently and for the foreseeable future refused to license them on fair reasonable and nondiscriminatory basis or to any basis and threatened those who seek TETRA.

The Skybridge Parties asked the TA to provide those Relevant Facts soon, and stated to the TA that if it elects not to do that, then the undersigned will proceed with a more substantive filing Opposing the TA Petition. The undersigned does not expect the TA or related parties to provide those Relevant Facts (since in the past such requested were denied), but the undersigned asked for them explaining that providing them would decrease contention before the FCC is any of them provided those. The undersigned will in a future filing in this matter, submit that request and any response to it.

Initial Opposition

2. Procedural Defects

The Skybridge Parties reference and incorporate their comments above, and further state the following in opposition, as well as to support their requests for party designation, public notice, and investigation.

While the Skybridge Parties may not oppose some aspects of the TA Petition in their planned subsequent Opposition, in this Initial Opposition they present a summary as to why is fundamentally flawed. They informed the TA of their threshold concerns noted below and other concerns, but the TA did not respond.

3. Lack of standing

The TA (again, the TETRA Association) lacks standing to file the Petition. The TA is not a US legal entity. Moreover, it does hold any FCC licenses outright (or any rights to any FCC license via any lease) for which any current (or even possible future) TETRA equipment may be operated under the rules subject of the requested waivers and thus under any grant of the waivers. Further, TETRA technology is not owned or controlled by the TA or UTC (comments on UTC are below) nor does the TA manufacture TETRA equipment. TETRA technology is developed under ETSI as an international wireless standard for major (and minor) PMR digital trunked-systems; manufactured and sold by various companies, and may be purchased by

qualified radio-spectrum licensees in various nations including in the US (if not for the blocks and threats noted herein). No such licensees or TETRA equipment makers joined in and signed the TA Petition.⁶ As the US Court of Appeals for the DC Circuit found in 1996, in *SunCom v.*

FCC (underling and item in brackets added):

SunCom filed requests with the Commission on February 1, 1994 for ... a waiver of the Commission's eight-month construction deadline for 220 MHz licenses, [contained in the FCC rule section] 47 C.F.R. § 90.725(f)....

"In order to establish standing under Article III, a complainant must allege (1) a personal injury-in-fact that is (2) 'fairly traceable' to the defendant's conduct and (3) redressable by the relief requested." *Branton v. FCC*, 993 F.2d 906, 908 (D.C.Cir.1992) [318 U.S.App.D.C. 379] (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 3324-25, 82 L.Ed.2d 556 (1984)), cert. denied, --- U.S. ----, 114 S.Ct. 1610, 128 L.Ed.2d 338 (1994)....

At the time SunCom filed the requests, it had no 220 MHz licenses of its own but only "written expressions of interest..."

These allegations fail to show the required "injury-in-fact," namely, "an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not "conjectural" or "hypothetical," ' " *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992) (citations omitted)....

⁶ They are not even served copies. And the licensees most active in seeking TETRA and who have the most unused spectrum for TETRA, the Skybridge Parties, area not only not served a copy, but are opposed by the TA in their efforts to clear the Motorola block and litigation threat of TETRA in the US. In addition, the only two equipment makers that the Petition, on page 10, names and weakly suggests may bring TETRA "competition" to the US, Motorola and Tyco/Harris, are not only not served copies, but Motorola is the direct cause of blocking TETRA in the US and Tyco/Harris does not make TETRA core radio systems and terminals (but claims it provides "common universal networking platform" [*] which supports TETRA systems") ([*] from: <http://www.tycoelectronics.com/aboutus/news/prodnews.asp?id=1267>) and it sells its own 4-slot TDMA, Open Sky. It has not supported TETRA introduction in the US. Petitioner sought support from Tyco, including in direct meetings, but with no success. Both Motorola and Tyco/Harris, who do not want TETRA in the US, are dues paying major members of the TETRA Association, have Board seats in that Association, and have major influence in that Association and in UTC due to their being the major suppliers to UTC members. (See below regarding UTC.)

Suncom v. FCC, 87 F.3d 1386; 318 U.S. App. D.C. 377; 1996 U.S. App. LEXIS 16257

(“*Suncom*”).⁷ As noted above, as with SunCom, the TA has no FCC licenses based on which it may seek rule waivers (a licensee may seek waivers of FCC technical rules for equipment seeks to use, as well as other rules pertaining to its license(s)), and that may be injured by lack of grant. Nor is the TA an equipment maker that may submit equipment to the FCC to utilize grant of the waivers. Nor, according to Court in *Suncom*, does the TA have standing based on hypothetical interest and injury of any of its members that are equipment makers or licensees (the undersigned does not believe there are any such FCC licensee member of the TA):

Public Citizen v. Lockheed Aircraft Corp., 565 F.2d 708, 717-19 (D.C.Cir.1977) (economic injury claimed by industrial machinery dealers represented by trade association challenging sale of property by General Services Administration to private company--loss of members' opportunities to sell their own property to purchaser or to purchase one of plants sold--was "too speculative" where association "claimed only that its members were interested in purchasing 'some of the property sold to [the purchaser]' " and there was no evidence of "any existing relationship between [purchaser and members] which would require [purchaser] to buy from them as opposed to buying from non-members" nor any "demonstration that its members presently participate in or contemplate participation in a viable business project which had adequate resources and an existent intent to purchase property such as [that claimed]").

4. Lack of Ripeness and Futility

The TA Petition is not ripe, and indeed, the evidence noted herein demonstrates that it is, and grant of it would be, futile. It is against FCC rules, court precedent and public law and policy to petition the FCC to waive its rules when, if that relief is granted, that relief cannot be

⁷ More broadly, standing to bring actions before a US administrative agency, decisions on which are subject to appeal to courts (as in the case of FCC waiver grants or denials) are subject to Article III standing requirements under the US Constitution, which the TA clearly fails to satisfy for reasons summarized in the *SunCom* case cited above. The requirements include demonstration of injury, causation and redressability, none of which the TA in the TA Petition satisfies. In addition to the *SunCom* case, see the US Supreme Court decisions *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), and *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

applied.⁸ See the US and Circuit cases cited above regarding standing. In sum, as further shown herein, the TA Petition is not ripe and is futile since (i) Motorola blocks TETRA in the US and threatens patent infringement litigation against those who do seek TETRA,⁹ and (ii) no TETRA equipment maker is willing to sell TETRA equipment in the US until that Motorola blocking and threat is legally and clearly solved.

5. Lack of Candor, False Statements, Misleading Statements, and Abuse of Process

For reasons noted above and further below, the TA lacks candor in submitting the Petition, when it certainly knows the defects of lack of ripeness and futility described above,¹⁰ and it knows or should the defect of lack of standing.¹¹

⁸ Indeed, that is the way in which the TA has conducted its presentations to the US PMR markets: it first asks key staff and officers of US FCC licensees to spend their time and resources to listen to the TA and support its interests (the reality of which is keeps in private discussion with its members, including what the TA often publicly states in the US as its “good member, Motorola”) but without itself showing to these FCC licensees that it has sincerity and standing. That sincerity and standing, if it existed, would require the TA—the self proclaimed authority on TETRA—to demonstrate to the interested US PMR market, including the Skybridge Parties, that it has a legally sound solution to its “good member” Motorola’s blocking of TETRA in the US and litigation threats, or at the very least that it is strongly and publicly seeking and supporting legal solutions, including that others demonstrate, and is using best-effort means at its lawful disposal to change the Motorola blocking and threat position. It has not done that, despite repeated requests by the Skybridge Parties. Instead, at meetings the undersigned arranged, the TA CEO, Phil Kidner, stated first discussed its “good member” Motorola, and then stated repeatedly that the undersigned did not know what he was talking about regarding legal solutions, and the same TA CEO informed a large gathering of UTC (United Telecom Council) member as their annual meeting in in Orlando that “you can’t have TETRA” while at the same meeting the undersigned attempted to explain legal solutions.

⁹ Motorola, the TA, and others aware those threats understand basic US patent infringement law including that damages may be sought for a multiple of actual damages.

¹⁰ The TA Petition goes so far in misleading statements as to suggest that Motorola stands ready to sell TETRA in the US, when it knows Motorola to be the direct cause of the blocking TETRA in the US (with TA shelter), where it tells the FCC on p. 10:

There are a large number of TETRA product manufacturers worldwide, including U.S. companies such as Motorola and Tyco/Harris. This...allows for greater competition and lower prices

Also, the premise stated in the TA Petition is false. It asserts that “a number of manufacturers stand ready to produced TETRA-based devices in this country.” The Skybridge Parties have spent hundreds of hours, and large travel, legal, and other costs, in communications with all TETRA equipment manufacturers (and with companies that have SDR radios capable of running TETRA) that expressed any interest in providing TETRA for the US market. They all, without exception repeatedly state to the undersigned, and in the US market that they will not manufacture and sell TETRA (including in the current spectrum ranges for TETRA that are within US PMR bands) for use in the US without the legal block and litigation threat by Motorola described herein legally and clearly solved. They have told that to the undersigned in communications that also included the CEO and Chairman of the TA. There is no evidence otherwise, and that includes after repeated requests by the undersigned to the TA officers and to said TETRA equipment manufacturers. It is also reflected in the website www.tetra-us.us including in the Declarations page, and none of the manufacturers listed therein issued any corrections to that website’s controller at any time (the undersigned is in charge of that website for Skybridge Spectrum Foundation and its supporters). Even if that statement of in the TA Petition were true, it fails to provide standing for reasons given above. But it is a further disqualification to submit a false statement to the FCC to seek anything from the FCC. The FCC staff time is an important public resource paid for by US public tax dollars and other public funds, and it cannot lawfully be taken up under guise of false statements or lack of candor in failing to disclose material facts.

In addition, the TA Petition also rests on misleading statements (as well as the false ones noted above) including where it asserts, on pages 1 and 12:

¹¹ It is not believable that the TA, in association with UTC (see below) and with FCC-law expert legal counsel does not understand this defect.

A waiver will allow TERrestrial Trunked RADio (“TETRA”) technology, widely used around the world as the next generation standard for digital mobile radio technology, to be used in the United States. ...

For the reasons set forth herein, the Association requests waivers of Sections 90.209, 90.210 and 2.1043, permitting the TETRA standard to be used in the United States. These requested waivers will serve the public interest, as the availability of TETRA in the United States will open the U.S. market to a low cost, fully-interoperable, and cutting edge technology much needed by public safety and private mobile radio users.

First, TETRA is not the “next generation” or “cutting edge” by any stretch.^{12 13} It is a mature technology originating in ETSI and commenced in the European market in the early to mid 1980s. The next generation of PMR is wide band and broadband PMR, for example, the IP Wireless TD-CDMA system used in the New York City NYCWiN network. Nor is TETRA “low cost,” rather, it is generally more expensive than current analog PMR per coverage. It may be as cost effective for coverage capacity. It is less expensive than P25, but P25 is known to be over priced or at least very expensive, as the GAO noted in GAO-07-301.

In addition and more fundamentally, the TA Petition only deals with some services, not even all, within FCC Part 90. There is other spectrum including under Parts 80 and 22 that could be used for TETRA (and contain licensees including the Skybridge Petitioners who hold more spectrum than any the TA can demonstrate, that have been pursuing TETRA) and thus the TA Petition is misleading to state without qualification that if its sought waiver are granted, that will “allow” TETRA to be used in the United States and “open the US market” for TETRA. Also, many of those Part 90 radio services that the TA Petition deals with involve shared spectrum where TETRA multi-site systems, that require geographic exclusive spectrum for good planning and operations, will be difficult, and where co-channel

¹² If PMR, especially in the US, was not so inept and subject to ingrown old-boy stifling manipulation, partly noted herein, as compared to CMRS, that assertion would be downright laughable.

¹³ Likewise false, for above and other reasons, is the TA Petition statement:

No other available LMR technology has the capabilities of TETRA, which combines voice (two-way radio), mobile telephony, status messaging, short data service, packet data up to 28.8k/bits, enhanced data (up to 600k/bits), encryption, and more.

users in the vicinity using older analog systems will be substantial (raising issues not unlike those Nextel faced in deploying iDEN, which is somewhat similar to TETRA, on 800 MHz Part 90 channels). The TA Petition exhibit at p. 13, however, says it deals with only adjacent channel issues. While these problems may be addressable, they are glossed over in the TA Petition, and the TA does not show that it attempted to resolve the potential problems with parties that may be affected. It did not even serve a copy on parties it must know have interest. That includes NPSTC:

On invitation by Marilyn Ward of NPSTC, the undersigned arranged a presentation on TETRA before NPSTC in June 2008.¹⁴ The presentation included a TA Board member, Roger Dowling (as presentation at the preceding footnote shows). As a result of the presentation, the NPSTC Board and the TA agreed to undertake a joint technical study objectively comparing TETRA and P25. Mr. Sorley for NPSTC was assigned to this task on behalf of NPSTC. NPSTC proceeded seriously, as shown in its November 2009 Board Minutes on page 13.¹⁵ However, the TA declined to provide the needed funding to proceed with this important project that was obviously a major opportunity for TETRA in the US, if the TA actually had interest in that versus serving the interest of its Motorola to block and at least delay TETRA until its US patents for TETRA expire (the last of which, for TETRA Release 1, appears to expire in year 2014). The TA both avoids and even opposes the major opportunity for TETRA in the US presented by the Skybridge Parties that have the most spectrum in the US for advanced intelligent transport, but also by the public safety community: public safety and transportation are two of the largest three markets for TETRA. However, the point here is that the TA is fully aware of the interest and the concerns (justified or not) by NPSTC and its public safety constituents, yet it did not address those in the TA Petition nor did it serve a copy on NPSTC or any of those constituents. That is a defect for reasons noted above.

¹⁴ Copy at: <http://www.npstc.org/meetings/20080618-Havens-TETRA-v2.pdf>.

¹⁵ Copy at: <http://www.npstc.org/meetings/NPSTC%20Gov%20Bd%20November%202008%20121808.pdf>

The disqualification created by lack of candor, false and misleading statements, and the like is well known.

[T]he Commission defines lack of candor to include not only providing false information but also “concealment, evasion or other failure to be fully informative accompanied by an intent to deceive.” *Trinity Broad. of Fla., Inc.*, 10 F.C.C.R. 12020, 12063 (1995).

James A. Kay v. FCC, 396 F.3d 1184; 364 U.S. App. D.C. 448; 2005 U.S. App. LEXIS 1540 (hearing, en banc, denied). In this *Kay* case, the US Circuit Court for FCC upheld the FCC decision including the following:

See also *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981) (“As a licensing authority, the Commission is not expected to ‘play procedural games with those who come before it in order to ascertain the truth’ [....] Moreover, the failure to provide information known to be relevant or a failure to respond based on a facially implausible theory may constitute lack of candor. *Fox Television Stations, Inc.*, 10 FCC Rcd at 8508 PP137.

In the Matter of James A. Kay, Jr., FCC 01-341. Released January 25, 2002. 17 FCC Rcd 1834; 2002 FCC LEXIS 409.

For reasons noted above, the TA Petition also appears to be an abuse of process under standards the Commission has set:

....concealed material facts....“none of NMTV's applications seeking a minority exemption . . . disclosed to the Commission information about Duff's relationship with TBN or NMTV's relationship with TBN.”.... NMTV's applications were “models of nondisclosure” ... and therefore constituted abuse of process.

In re Applications of Trinity Broadcasting of Florida, FCC 98-313. Released April 15, 1999. 14 FCC Rcd 13570; 1999 FCC LEXIS 1591. In the instant matter, the TA does not disclose the most relevant facts noted herein (the Motorola blocking and threats), and it asserts a false premise, as discussed above: that appears to be abuse of process. Submitting a petition to the FCC that one knows, or should know, to be futile and thus pursued for some other reason is also abuse of process.

6. Grant of the Sought Waivers Cannot Be Assigned;
Waiver Assignments Are Not Allowed Under FCC Rules;

and Suggested Assignments Fail to Meet Standing Requirements

Even if (and the undersigned at this time questions it for cause to be noted later) the TA Petition had technical and public interest merit under the criteria required for waiver grant under Section 1.925 of the FCC rules or Section 1.3, there is no provision under FCC rules or policy for the TA to assign a grant to any TETRA equipment manufacturer or to any US licensee seeking to use equipment under the grant. More fundamentally, the TA fails to have and demonstrate standing in this situation, as discussed in the last quote from the *SunCom* case included above. Any grant of the requested waivers would be to the TA. Rule waivers, as opposed to rule changes, are granted in unique circumstances demonstrated by a party that has standing to seek and benefit from grant upon showing of extraordinary need and that has otherwise complied with FCC rules and policy in good faith. Waivers cannot be sought and granted and then, in effect, licensed off to others (such as some TA members) who may not in fact meet waiver standard, which is what the TA must be suggesting. TETRA is used only for high-power government-licensed spectrum, not for use in unlicensed bands, and in any case, the TA does not make equipment for unlicensed or licensed bands. Nor does it have any legal or other power to obligate its members that make TETRA equipment to follow its dictates or use any FCC waiver grant. Again, see the *SunCom* excerpts above.

7. Lack of Notice to Potentially Effected Parties

The TA also fails to serve a copy of the TA Petition on parties that, by its own text, it knows may be affected. That is discussed above, and indicated further below.

8. Lack of Identification of and Certification by the Engineer

Any technical exhibit or assertions of decisional importance, as in this case, warrant the identification of and certification by the engineer that authored them, for the FCC and parties in interest to consider its reliability and to communicate if appropriate with the authors. The TA Petition did not provide this.

9. Further Discussion of the Skybridge Parties’
Interest and Purpose in this Matter

The Skybridge Parties seek to minimize use of FCC staff recourses on matters where petitions lack standing and/ or that are not ripe or futile, as in this case, and where petitioners choose to withhold those defects. Thus, they present this pleading.

The Skybridge Parties have sought TETRA equipment from equipment companies that expressed willingness to provide it (subject to a legal solution to the Motorola blocking and threats) and respect of US law and interests involved, and the also sought support from and gave support to the TA for the same purposes. After an initial period (reflected in www.tetra-us.us), the TA elected a contrary position, and now presents a petition to the FCC without meeting threshold requirements that are well known, that lacks required candor, and that seeks to evade the interest of the most active FCC licensees seeking TETRA in the US, the Skybridge Parties, that also have the most available FCC spectrum to use TETRA.¹⁶ Those TA actions hurt the case for TETRA in the US and assist in the blocking and threat position of Motorola.

The Skybridge Parties have clearly and repeatedly informed the TA, its members including Motorola, and UTC¹⁷ of its position, and given in detail the reasons. None of them

¹⁶ The Skybridge Parties will further explain that in the upcoming more-full Opposition.

¹⁷ UTC informed the undersigned that it has an ad hoc group that developed with the TA the TA Petition. The TA and UTC did not include the undersigned for the Skybridge Parties in that group, except to deliver a copy of the petition after it was filed, despite the fact that UTC knows well that the undersigned has keen interest in the matters of the TA Petition and that group, and the Skybridge Parties include a UTC member, and has recently asked to be part of that group and get past group documents. UTC has not granted that request. Similarly, the undersigned asked the TA CEO and Chariman if one of his companies could join the TA as a member under its standard rules and procedures, and they did not respond. It is clear that the TA and UTC do not want their position before the FCC, or in the US markets, to be subject to any opposing views. Apart from the matters of their internal laws with respect to members and member applicants, the undersigned believe that is against public interest in these circumstances based on the public position and work of the undersigned and the Skybridge Parties to open access for TETRA to all in the US, based on fair application of law and clear public interests at stake. Motorola is a principal member of both the TA and UTC. The undersigned and the Skybridge Parties have no relation with Motorola, and do not accept relations with any company contrary to US law and

have shown facts and law to the contrary. However, any violations of US law and public interest thereby caused by Motorola and parties in direct or indirect support of Motorola is a matter subject to the primary jurisdiction of US courts (and in some instances, also the US Federal Trade Commission, the US Department of Justice, and analogous State authorities). If violations are found, that could be relevant to related matters then pending or later submitted to the FCC under its jurisdiction.

10. Substantive Defects: Failure to Meet Waiver Standard

The Commission has set forth its standards to grant waivers, including with regard to equipment rules for licensed spectrum as follows (the below is from such a case) (footnotes in original, with numbering changed to confirm with this pleading):

In analyzing the waiver requests, we consider established legal standards for waiver of the Commission's rules. The Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."¹⁸ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."¹⁹ The party petitioning the Commission for a waiver bears the burden of showing good cause: "[a]n applicant [for a waiver] faces a high hurdle even at the starting gate."²⁰ The Commission must take a "hard look" at applications for waiver²¹ and must consider all relevant factors when determining if good cause exists.²² Finally, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."²³

The TA did not commence to this burden. The defects discussed above as procedural defects also demonstrate lack of the required public interest to meet this substantive criteria,

public interests. That poses a problem with may parties' business practices, but it is their problem under public law and public interests.

¹⁸ *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964).

¹⁹ 47 C.F.R. §1.3.

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²¹ *Id.*

²² *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

²³ *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

since, to start with, the TA Petition is not joined and signed by any FCC licensees or TETRA equipment maker that may take use grant of the Request in the public interest.

In addition, the TA Petition glosses over the technical and public interest assertions in the text, with little support other than in the exhibits.

Further, the TA Petition asserts that the subject emission mask for which it seeks waiver is based on analog technology and is not suitable for digital technology. What it appears to argue is for a rule change, not a waiver, since a waiver is appropriate only if the subject rule is fundamentally sound, and it is clear that most recent-years and new PMR is digital like TETRA.

Also the Exhibit at p. 13 asserts without explanation or citing applicable FCC rule(s) that TETRA must comply with Mask B, C or G. Applicable Part 90 rules involved other emission masks in the spectrum ranges in which the TA Petition is limited. (While the TA Petition may be correct in this matter, it is not shown clearly as it should be.)

The “Purpose” of the exhibit²⁴ is not demonstrated since it only deals with emission masks and that is only one factor pertaining to that purpose.

The Skybridge Parties may comment further on this substantive criteria issue, in a further filing if the TA Petition is not dismissed and the opportunity arises.

11. Request to Designate the Skybridge Parties as Parties

Based upon—(i) the substantial interest of the Skybridge Parties expressed herein,²⁵ (ii) the fact that the TA did not include and serve them as parties when filing the TA Petition, nor did

²⁴ “The purpose of this technical note is to analyze TETRA’s impact on other technologies used for Land Mobile Radio (LMR) in the United States and to show that it can co-exist without causing interference to users of such technologies.”

²⁵ Unlike the TA, the Skybridge Parties as FCC licensees of spectrum suitable for TETRA have standing to seek waivers with regard to TETRA if they chose to. Skybridge has in addition nonprofit interest to support US public agencies in advanced PMR as part of its core purposes. And all of the Skybridge Parties may rightfully challenge any petition to the FCC that fails to meet procedural threshold requirements, and that employs statements they know to be false and that lack required disclosures, since that challenge is in support of FCC law and protection of FCC recourses in the public interest.

the TA associate entity in preparing the TA Petition, United Telecom Council (“UTC”), despite the expressed interests of the undersigned and his Skybridge Parties to the TA and UTC and their clear understanding of the Skybridge Parties’ interests in TETRA in the US and the facts asserted or withheld in the TA Petition, and (iii) the failure by the TA in submitting the TA Petition to disclose material facts shown above and to employ false facts, and to submit a procedurally defective Petition (that the TA and UTC could hardly believe was not defective), and the Skybridge Parties bringing that to FCC attention herein—*the Skybridge Parties request that the FCC designate them as parties to any processing of the TA Petition by the FCC.* This is appropriate since the Skybridge Parties act here in the public interest, including compliance with FCC rules and polices, and since they have major interests in seeing that TETRA is lawfully and effectively made available to the FCC, and not by attempts that have contrary intent or effect, as in the case of the subject TA Petition. If the TA Petition were a petition that permits a party with standing to submit a timely challenge and thereby become a Party, and if the Skybridge Parties (or some of them) had standing and submitted said challenge, then they would automatically become parties. But that does not apply in this case. Thus, the above request is submitted.

12. Request to Place on Public Notice
and For Investigation, and Not for Dismissal

For reasons given above, the Skybridge Petitioners believe that while the TA Petition is procedurally defective and thus may be dismissed without dealing with the substance, it possesses matters of major importance to the US PMR industry, including the blocking and threats by Motorola, the lack of candor and false statements in the TA Petition by the Association which includes Motorola as one its major members,²⁶ and since if TETRA in the US was not blocked,

²⁶ Motorola is the, or one of the several, major sellers of TETRA worldwide (that is common knowledge and can be proven up if needed) and has great influence in the TA, which Association informs the US markets including the undersigned that Motorola is its “good member” despite its blocking of and threats described herein. The TA also complained to the undersigned that

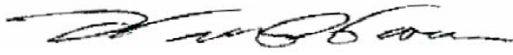
subject to threats, and subject to defective and misleading petitions (which divert from the real problem stated herein), it would be a great benefit to the US PMR market and to the public served by PMR operators including the Skybridge Parties for much needed public Intelligent Transportation Systems, utilities, railroads and others.

Thus, the Skybridge Petitioners request that the TA Petition be placed on public notice with an appropriately long pleading cycle, such as 90 or 120 days, given the magnitude of the issues raised and the amount of material that is likely to be submitted, and indicating the issues that the FCC asks to be addressed. After obtaining public comments and replies, the FCC may then proceed with any investigation it believes is warranted. The FCC has authority to fashion such a proceeding, even when a petition that commences it is procedurally defective. For example, it employs notices of inquiry proceedings upon outside request or its own motion, and also investigates licensees and license applicants under Section 308 of the Communications Act.

(The rest of this page is intentionally left blank.)

Motorola bitterly objects to the TA having any association with the undersigned based in his position in www.tetra-us.us, and after that complaint, the TA followed that Motorola objection faithfully in support of Motorola, at minimum. UTC also informed the undersigned, and also the US PMR markets via its trade press, that it also rejects the attempts at legal solutions to the Motorola block and threats set forth in www.tetra-us.us. The undersigned asserts that UTC has private interests for that that oppose US public interests and the interests of its members that are not too much beholden to and afraid of Motorola (such that those that depend on Motorola due to extensive current use of its products). US utilities are among the major users and beneficiaries of governments eminent domain powers and of the public rights of way. But on the other hand, they have for the most part long since obtained valuable private and public property by said exercise, and they now generally oppose wireless operators that see to “piggy back” on their rights obtained from government. In any case, for whatever reason, UTC opposes the legal solutions the undersigned asserts, and it has none itself. Thus, its participated in formulating and presenting TA Petition may fairly be questioned.

Respectfully submitted,



Warren Havens

President for each of the
“Skybridge Parties”²⁷ —

Skybridge Spectrum Foundation
Environmental LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC


2646 Benvenue Avenue
Berkeley California 94704
Phone 510 841 2220

December 15, 2009

²⁷ Use of the term “Skybridge Parties” herein is for convenience only, and by its use, none of the included parties imply that they are not (as is in fact the case) distinct legal entities under law, and in ownership, assets, business pursuits, and other essential distinctions, or that the nonprofit Skybridge Spectrum Foundation does not fully adhere to its obligations under applicable law to act only in support of defined public interest and not for any private interest when in some cases, including here, it joins in action with other legal entities that are not nonprofit entities with the same public-benefit interests and restrictions.

Declaration

I, Warren Havens, as President of Petitioners, hereby declare, under penalty of perjury, that the foregoing “Initial Opposition...”, including all Attachments, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

A handwritten signature in black ink, appearing to read "Warren Havens", written over a horizontal line.

Warren Havens

December 15, 2009

Attachment

The URL links to the full documents listed and summarized below are under their titles below.

These documents describe some of the Skybridge Parties' FCC-license based business plans and actions, and some their TETRA related actions in addition to those at www.tetra-us.us (which as described early in the text above, has not been updated since early 2009 and thus does not reflect of their position in this pleading).

[Added in these Initial Comments: A more full, current list is at: http://www.scribd.com/warren_havens.]

[Feb. 2007 Complaint to ETSI re Motorola Refusal to License US TETRA Patents](#)

Complaint to ETSI (European Technical Standards Institute) from Telesaurus LLCs concerning Motorola refusal to license its US patents for TETRA, to block TETRA sales and use in the United States. ETSI at first responded in writing that it would obtain a response from its member Motorola and report that to these Complainants, but later ETSI refused to provide the Motorola response, claiming that was an internal confidential matter. See also the document "November 2009 Open Letter to TETRA Association & ETSI re US TETRA radio Patents- Licensing Availability."

[C-HALO Cost-benefit Study Outline, UC Berkeley](#)

A 2010 University of California-Berkeley group cost-benefit study on Cooperative High Accuracy Location (C-HALO) with tightly integrated dedicated wireless communications, for nationwide smart transportation systems in the United States, with extensions to other domains: A next generation nationwide location infrastructure. The study is sponsored as public-interest research by unrestricted grants and grant pledges from Skybridge Spectrum Foundation and related LLCs that hold FCC licenses for nationwide smart transport, energy, and environment, including free core services (those most needed for safety and transport efficiency). The study follows on past work by the same University group and Skybridge in these areas.

[Skybridge-Telesaurus 2009 Overview of High Accuracy Location- HALO- to US DOT RITA](#)

2009 presentation to US DOT RITA by Warren Havens for Skybridge Spectrum Foundation (with support by Telesaurus LLCs, and in association with Prof. Raja Sengupta at University of California Berkeley, of nationwide High Accuracy Location (HALO) as the foundation for advanced Intelligent Transportation Systems, provide sub-meter accuracy guidance of vehicles along and across lanes to greatly reduce accidents, congestion, pollution, etc.

[Skybridge - Telesaurus Plan: Nationwide High Accuracy Location Based Intelligent Transportation \(2008\)](#)

2008 Summary of the Telesaurus LLCs- Skybridge Spectrum Foundation plan for nationwide Intelligent Transportation Systems based upon high accuracy (sub-meter) location (HALO) and guidance of vehicles, along and across lanes, using terrestrial and space (GPS-GNSS) multilateration and other forms of location determination, along with tightly integrated dedicated two-way and one-way radio communications, and dynamic GIS, as from ESRI. The plan was submitted at the 2007 ITS World Congress in Beijing, the FCC, NTIA and other entities and fora. The core safety and efficiency services will be at no cost to government agencies and the general public. Telesaurus and Skybridge are developing the technical components and deployment concepts with assistance of transportation-, wireless-, and other experts at the

University of California, Berkeley, and other entities. More recent work includes support of smart transportation as integrated with smart or intelligent transportation, as in V2G (vehicle to grid) enabled by said HALO+tight wireless. Smart transportation and energy systems will in large part merge, and they each and especially together need the planned dedicated radio location and communication networks.

[High Accuracy Location \(HALO\) for Intelligent Transport & Infrastructure, and GPS backup](#)

2009 presentation regarding planned nationwide High Accuracy Location (for vehicles, etc.) to augment and backup GPS, to the US Office of Position Navigation & Timing (that coordinates GPS among Federal agencies and is liaison with private sector) by W. Havens of Skybridge Spectrum Foundation (that holds FCC mLMS licenses with Telesaurus Holdings) and Prof. Raja Sengupta of University of California Berkeley, also with Prof. Kannan Ramchandran. The same presentation was made to other public agencies, and associations involving wireless communication and public safety.

[Smart Transport, Energy & Environment Radio - STEER, presentation to Caltrans, 2009](#)

2009 presentation of STEER- Smart Transport, Energy & Environment Radio systems by Warren Havens of Skybridge Spectrum Foundation (with support of Telesaurus LLCs, and Prof. Raja Sengupta and others of University of California Berkeley) to Caltrans. STEER is a proposed nationwide dedicated radio service for purposes noted above. It includes HALO- High Accuracy Location, and core services at no cost to end users (like GPS).

[Smart Railroads- 200 Wide Band+ High Accuracy Location, By Federal Railroad Admin, 2008](#)

2008 presentation by the Federal Railroad Administration of developments for smart or intelligent railroads based in large part on advanced wireless communications using 200 MHz radio spectrum, additional spectrum for wider band wireless, high accuracy location by enhanced GPS, etc. This parallels similar developments in intelligent or smart highways, electric grid, airports, and other core infrastructure, and for smart environment (wide scale environmental monitoring and protection). Skybridge Spectrum Foundation, Telesaurus and related LLCs focus on wireless for these Smart Transport, Energy, and Environment Radio systems, with core

[Errata and Notice: Oct 2009 Petition to FCC for Declaratory Rulings Re Section 47 USC 332 Preemption \(licensee antitrust violations & torts\)](#)

This an Errata to the document entitled on Scribd: "Oct 2009 Petition to FCC for Declaratory Rulings Re Section 47 USC 332 Preemption (licensee antitrust violations & torts)."

[Oct 2009 Petition to FCC for Declaratory Rulings Re Section 47 USC 332 Preemption \(licensee antitrust violations & torts\)](#)

Petition to the FCC for declaratory rulings whether the Communications Act including §332, or the jurisdiction of the Federal Communications Commission, preempts State or Federal court jurisdiction and awarding of monetary damages and other action sought by one CMRS or PMRS service provider against another, for violation of State or Federal antitrust law, tort law, and certain other law. Submitted by Skybridge Spectrum Foundation and affiliated LLCs in October 2009. See also Errata filed October 29, 2009. Submitted to obtain FCC rulings on preemption issues in pending court cases in the Ninth Circuit, the California Courts- at the Supreme Court level, and US District Court in New Jersey, regarding Skybridge Spectrum Foundation and /or affiliates Telesaurus LLCs as plaintiffs and as defendants Paging Systems Inc. (Sandra and Robert Cooper) Maritime Communications Land Mobile (Sandra and Donald Depriest)

(MCLM), Mobex (merged into MCLM), and in one case, Radiolink (Randy Powers).

[November 2009 Open Letter to TETRA Association & ETSI re US TETRA radio Patents- Licensing Availability](#)

November 2009 open letter to the TETRA Association & ETSI regarding the availability of licenses for the US Patents held by Motorola for TETRA technology so that TETRA radio equipment can be sold and used in the US. The same questions posed to these entities now, as in past years when they first pledged responses, then later refused responses. These entities publicly assert that they stand for promotion of TETRA worldwide, and have member that members act in accordance including with regard to licensing on fair and reasonable terms their patents for TETRA, but to date have not publicly or effectively acted in accord, including since they allow their member, Motorola, to violate those policies. This letter also cites the current Motorola web page on licensing its patents for TETRA which does not exclude its US patents for TETRA, indicating that Motorola either changed its past position to not license said US TETRA patents, or that Motorola is misrepresenting its position to the relevant markets.

[Tait Radio Support of Motorola, Unlawful Block of TETRA US](#)

Legal Notice from Telesaurus, Havens & associates to Tait Radio of violation of US law by publishing false statements supporting Motorola's unlawful and inequitable blocking of TETRA radio technology and equipment in the United States. Comment on TETRA as superior to other private mobile and fixed radio systems for use in US.

[Maritime Communications Land Mobile LLC, D. Depriest, & Affiliates: FCC Investigation, Aug 2009 \(1 of 3\)](#)

Federal Communications Commission August 2009 inquiry to three companies controlled by Donald and Sandra Depriest: Maritime Communications / Land Mobile LLC, Maritel, and Wireless Properties of Virginia regarding many conflicting statements of licensee control, affiliates and gross revenues (and bidding credits in AMTS Auction 61) and other matters, based upon the various petitions to the FCC submitted by competing bidders in that auction managed by Warren Havens. This is the first of three letters each dated August 18, 2009. The responses of these three above-named entities as well as related FCC filings by said competitors are in FCC public ULS files and may also be otherwise published.

[Maritime Communications Land Mobile LLC, D. Depriest, & Affiliates: FCC Investigation, Aug 2009 \(2 of 3\)](#)

[Maritime Communications Land Mobile LLC, D. Depriest, & Affiliates: FCC Investigation, Aug 2009 \(3 of 3\)](#)

[Spectrum Bridge, SpecEx- Legal Notice- Failure to Disclose AMTS License Conditions, Proceedings, Etc.](#)

Legal Notice to Spectrum Bridge, SpecEx, by W. Havens for his AMTS licensee companies, regarding failure to disclose FCC-investigation and FCC-rule issues in sales marketing of AMTS licenses of Maritime Communications/ Land Mobile and Thomas Kurian. (Before FCC [On ULS], and to Spectrum Bridge, the Havens' AMTS licensee companies presented detailed facts and law as to why they were the rightful high bidders for the AMTS licenses issued to MCLM in FCC Auction 61, and they have a binding contract to obtain 90%+ of the T. Kurian AMTS

license. Also, the FCC is investigating (commencing mid August 2009) under Section 308 of the Communications Act the facts demonstrated in the Havens' companies, as indicated in this document.

[FCC Communications Act Sec. 308 Decision- Licensee Kay, Attorney Dennis Brown- Lack Candor, License Revocation, Fines](#)

FCC full Commission decision in 2002 regarding licensee Kay and attorney Dennis Brown regarding investigation under Section 308 of the Communications Act, finding lack of candor and other failures in responding, and underlying violations of FCC license rules, and resulting in license revocations and monetary fine. Attorney Dennis Brown is the same attorney handling the year 2009 (commenced) Section 308 investigation regarding Donald and Sandra Depriest, Maritime Communications Land Mobile LLC (MCLM), Wireless Properties of Virginia, and Maritel (said three entities controlled in relevant periods by one or both of the Depriests).

[The following is the Certificate of Service used for the “Previous Submission,” defined above.]
[These Initial Comments will be submitted on ECFC.]

Certificate of Service

I, Warren C. Havens, certify that I have, on this Tuesday, December 15, 2009, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a printed copy of the foregoing “Initial Opposition...” to the following, as follows. The service copies served by the US Postal Service (“USPS”) mail are being placed into a USPS drop-box today, but if that is after the last time that said box’s contents are picked up by a USPS employee for processing, said mail may not be processed and post marked by the USPS until the next business day. Also, courtesy copies, not for purposes of service, will be sent to the emails listed below.

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Other entities with interest (of which the Skybridge Parties are aware) and that are named in this pleading, and that may have relevant information

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[Execution on next page.]

A handwritten signature in black ink, appearing to read "Warren Havens". The signature is fluid and cursive, with a long horizontal stroke at the end.

Warren Havens